

### **REMARKS**

The Office Action of May 31, 2006 has been carefully reviewed and this paper is Applicants' response thereto. Claims 1- 37 are pending. Claims 8 and 11 are amended. Claims 1-6, 12-13, 17, 20, 22-31 and 33-36 were rejected under 35 U.S.C. § 102(3) as being anticipated by U.S. Patent Pub. No. 2001/0034542 to Mann (Mann). Claims 7-11 and 21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mann. Claims 14-16 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mann in view of U.S. Patent Pub. No. 2004/0015205 to Whitehurst *et al.* (Whitehurst). Claims 18-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mann in view U.S. Patent No. 6,594,524 to Esteller *et al.* (Esteller).

In response, the Applicant respectfully traverses the rejection with the following remarks.

#### **Amendment to the Claims**

Claims 8 and 11 are amended to correct minor typographical errors, however no change in the scope of patents was made and no new matter was added.

#### **Rejection under 35 U.S.C. § 102(e) - Mann**

Claims 1-6, 12-13, 17, 20, 22-31 and 33-36 were rejected under 35 U.S.C § 102(e) as being anticipated by Mann. Claims 1 and 25 are independent.

Claim 1 is directed toward a method that includes the steps of "assessing whether the first set of information is within a range of safety." The Office Action suggested that Mann disclosed this, pointing to pg. 2, paragraphs 11-12 of Mann. However, these cited paragraphs of Mann indicate that a user supplies a threshold range for at least one electrode and then that range is used to estimate threshold ranges for other electrodes. Thus, the device of Mann fails to assess whether information is within a range of safety. Instead, the system of Mann is given a range of acceptable stimulation values and makes no assessment as to whether the provided information is safe. Thus, the method of Mann simply fails to address the concept of assessing safety because the information provided is accepted rather than assessed.

In addition to the above missing feature, claim 1 recites the feature "if the first treatment therapy is not safe, executing a corrective action." The Office Action has not pointed to any

location in Mann, nor are Applicants aware of any, that discloses providing this feature. Thus, Mann fails to disclose an additional feature of claim 1. Claim 1 also recites the feature “if the first treatment therapy is safe, storing the first set of information for subsequent use” and the Office Action has pointed to no location in Mann that discloses storing the therapy information responsive to an assessment that the therapy treatment is safe. Instead, it appears that Mann would save the information regardless of the therapy’s safety. Therefore, Mann fails to disclose yet another feature of claim 1.

Thus, for at least the above reasons, Mann fails to disclose all the features of claim 1 and cannot be said to anticipate claim 1.

Claims 2-6, 12-13, 17, 20, 22-24 depend from claim 1 and are not anticipated by Mann for at least the reasons discussed above with respect to claim 1 and for the additional features recited therein. For example, claim 6 recites “associating a first label with the first set of information.” The Office Action suggests that Mann discloses this, point to pg. 3, ¶ 20 and pg. 5, ¶ 48. However, Applicants can find no mention of “associating a first label with the first set of information” in these cited sections of Mann. Instead, in paragraph 20 Mann discloses that adjustments to stimulations levels equalize estimated electrode thresholds can be stored. And paragraph 48 merely discloses the threshold range for each electrode is equalized based on perception thresholds. Applicants respectfully submit that storing adjustments that may be used to equalize electrode thresholds can not fairly be equated with associating a first label with a first set of information. Indeed, Mann does not appear to contemplate the concept of labels in the first place, let alone as recited in claim 6.

Claims 34-36 are based on claims 1, 4 and 5 and therefore include features that are not disclosed by Mann for at least the reasons discussed above with respect to claim 1.

Claim 25 recites a feature similar to claim 1 and, therefore, not all the features of claim 25 are disclosed by Mann for at least the reasons discussed above with respect to claim 1.

Claims 26-31 and 33 depend from claim 25 and are not anticipated by Mann for at least the reasons discussed above with respect to claim 25 and for the additional features recited therein. For example, claim 27 recites a feature similar to the feature recited in claim 6 and

therefore is also not anticipated for at least the additional reasons discussed with respect to with claim 6.

Accordingly, withdrawal of this ground of rejection is respectfully requested.

**Rejection under 35 U.S.C. § 103(a) – Mann et al.**

Claims 7-11 and 21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mann. Claims 14-16 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mann in view of Whitehurst. Claims 18-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mann in view of Esteller. Thus, claims 7-11, 14-16, 18-19, 21 and 32 are rejected in view of Mann, alone or in combination with another reference.

As noted above with respect to claim 1, however, Mann fails to disclose all the features of claim 1. Nor have any of the other references of record been suggested to correct the above noted deficiencies in Mann. Thus, for the reasons discussed above, Mann, alone or in combination with the cited references, fails to disclose all the features of claim 1 or 25 and therefore the references of record fail to disclose all the features of the claims that depend therefrom. Accordingly, Mann, alone or in combination with the references of record, fails to support a *prima facie* case of obviousness for claims 7-11, 14-16, 18-19, 21 and 32.

In addition, claim 7 discloses the use of the label and Applicants respectfully disagree with the statements in the Office Action suggesting that such a feature is merely a design choice. The specification as filed explains that names, which are an example of a label, can be saved and further explains that the configurations can be checked so that different names are not saved for essentially the same configuration. (See specification as filed, pg. 35-36, ¶ 116). Furthermore, multiple configurations can be saved, allowing a user to readily switch between configurations. Thus, the specification as filed does disclose benefits of providing labels. Nor has the Office Action pointed to any location in Mann that discloses such a feature. Therefore, Mann fails to support a *prima facie* case of obviousness with regard to claim 7-11 and 21. Accordingly, for this additional reason claims 7-11 and 21 are patentable over the references of record.

Thus, for at least the above reasons, claims 7-11, 14-16, 18-19, 21 and 32 are patentable over the references of record.

**CONCLUSION**

All rejections having been addressed, Applicant respectfully submits that the instant application is in condition for allowance, and earnestly solicits prompt notification of the same.

Respectfully submitted,  
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